IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O. O. C. J.

SUIT NO.1405 OF 2002

Fatima Abdur Rehman (since deceased)
Ashfaque Abdur Rehman Omer. ...Plaintiff.
Vs.
Mrs. Salma Moin Zafar & Ors. ...Defendants..
....
Mr.S. K. Srivastav for the Plaintiff.
Mr. Darshan Mehta i/b. Dhruva Liladhar & Co. for the Defendants.
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CORAM : DR.D.Y.CHANDRACHUD, J.

August 11, 2006.

P.C.

Consent Terms were arrived at on 14th June 2005 between the Plaintiff and Defendant Nos.1 to 5 before a Division Bench (in Appeal (L) No.566 of 2004 in Notice of Motion 2052 of 2002 in Suit 1405 of 2002). The Plaintiff and the First and Second Defendants are siblings, the Plaintiff being the brother while the First and Second Defendants are his sisters. Under Clause 10 of the Consent Terms, parties agreed to value the residential flat being Flat 20 at India House, situated at Kemps Corner, Mumbai at Rs.1 crore. The Plaintiff had offered to purchase the flat and to pay the First and Second defendants their share which was quantified at 55% of the aforesaid amount, within a period of three months.

The Consent Terms provided that in the event that the Plaintiff failed to purchase the flat within the stipulated period, then Mr.S.K. Srivastava of S.K. Srivastava & Co. and Mr.Darshan Mehta, of Dhruve Liladhar & Co., Advocates would stand appointed jointly as Receivers for carrying out the sale of the flat. The Plaintiff was unable to purchase the flat, upon which the private receivers stood appointed. The Receivers issued a public notice on 18th March 2006 in the newspapers inviting offers for the sale of the flat, on or before 25th March 2006. A public auction was held at which two bids were received. One was of the Second Defendant while the other offer was received from a third party. The offer of the Second Defendant in the amount of Rs.1,15,25,000/- was accepted being the highest bid. The Second Defendant had initially issued a Pay Order of Rs.5 lakhs towards earnest money. Under the terms of the sale, the Second Defendant had to deposit Rs.28,81,250/- representing 25% of the purchase price on or before 4th April 2006 after deducting the amount of Rs.5 lakhs which was already paid. The share of the Second Defendant is 27.5% and which was, therefore, required to be deducted from the sale price. The Second Defendant paid a total amount of Rs.28,81,250/- on 4th April 2006 leaving a balance due and payable of Rs.86,43,750/-. After deducting the Second Defendant's 27.5% share which was

quantified at Rs.31,69,375/-, the balance due and payable was Rs.54,74,325/-. This was required to be paid on or before 24th April 2006. The Second Defendant deposited a further sum of Rs.26 lakhs after that date, on 14th June 2006, leaving a balance of Rs.28,29,325/-. The Second Defendant had informed the Receivers in the meantime that she had applied for a housing loan from HDFC Bank and, therefore, there was some delay on her part in paying the balance. As the parties are closely related, the Receivers extended time to pay the balance. Objections were, however, received from the Plaintiff and the First Defendant against the extension of time. In the meantime, the Second Defendant informed the Receivers that her loan proposal had been processed by HDFC Bank; that a Pay Order of Rs.30 lakhs was also ready and that it would be handed over against the deed of release, duly registered with the Sub Registrar of Assurances. The Plaintiff has since addressed a letter to the Receivers stating that he has no objection to the Receivers paying an amount of Rs.31,69,375/- to the First Defendant and paying his 45% share, after receipt from HDFC Bank. Parties have thereafter, signed and executed a Deed of Release on 4th August 2006. On 5th August 2006, the Constituted Attorney of the First Defendant was given a cheque of Rs.31,01,202/- after deducting the expenses of the sale

towards full and final payment to be received by the First Defendant. Counsel stated that the Plaintiff has been paid a sum of Rs.23,74,695/- on 5th August 2006 and that the balance of Rs.27 lakhs has also been paid today. An affidavit has been filed by the Plaintiff stating that he has no objection to the confirmation of the sale. Both the Receivers who are present before the Court state that a Deed of Release has accordingly been signed by the Plaintiff and by the Defendants and it has been duly registered. A copy thereof has been placed on the record. In these circumstances, the prayer which has been made in the report submitted by the Court Receiver for confirmation of sale can be granted. Parties are closely related. The dispute between them has been settled. The Receivers have stated before the Court that parties have duly received their respective shares out of the sale consideration. The report is made absolute in terms of prayer clause (a).

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